

**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
GALVESTON DIVISION**

FERNANDO LEON

Plaintiff,

VS.

M/V YONG AN 2, her engines, boilers, tackles, etc., *in rem*; CHINA OCEAN SHIPPING COMPANY, a/k/a COSCO; COSCO BULK CARRIER CO., LTD.; COSCO AMERICA, INC.; CHENGDU KETE PIPE ENGINEERING AND MATERIAL CO., LTD.; COMMERCIAL METALS COMPANY

Defendants.

C.A. NO. G-05-530

IN ADMIRALTY - RULE 9(h)

**ORIGINAL ANSWER OF DEFENDANTS CHINA OCEAN SHIPPING COMPANY
a/k/a COSCO, COSCO BULK CARRIER CO., LTD., AND COSCO AMERICA, INC.,**

TO THE HONORABLE JUDGE OF SAID COURT:

COME NOW Defendants, China Ocean Shipping Company a/k/a Cosco, Cosco Bulk Carrier Co., Ltd., and Cosco Americas, Inc., incorrectly listed as Cosco America, Inc. (hereinafter “Defendants”), and file this their Original Answer in the above entitled and numbered cause in response to Plaintiff’s Original Complaint as follows:

FIRST DEFENSE

The Complaint fails to state a claim upon which relief can be granted.

SECOND DEFENSE

Defendants answer the specific allegation of Plaintiff's Original Complaint as follows:

I.

Defendants admit the allegations contained within Paragraph 1 of the Plaintiff's Original Complaint.

II.

The allegations contained in Paragraph 2 of the Plaintiff's Original Complaint are denied, except it is admitted that the Plaintiff alleges that he was injured in Houston, Texas..

III.

Defendants admit that the M/V YONG AN 2 is a foreign flagged vessel, but are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 3 of the Plaintiff's Original Complaint

IV.

The allegations contained in Paragraph 4 of the Plaintiff's Original Complaint are denied, except is it admitted that the Defendant China Ocean Shipping Company is a foreign corporation or other legal entity duly organized, created and existing pursuant to the slaws of the People's Republic of China.

V.

The allegations contained in Paragraph 5 of the Plaintiff's Original Complaint are denied, except it is admitted that Defendant Cosco Bulk Carrier Ltd. is a foreign corporation and that was time charterer of the M/V YONG AN 2.

VI.

The allegations contained in Paragraph 6 of the Plaintiff's Original Complaint are denied, except it is admitted that the Defendant Cosco Americas, Inc. maintains its principal office in Secaucus, New Jersey..

VII.

Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 7 of the Plaintiff's Original Complaint.

VIII.

Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 8 of the Plaintiff's Original Complaint

IX.

Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 7 of the Plaintiff's Original Complaint.

X.

The allegations contained in Paragraph 10 of the Plaintiff's Original Complaint are denied.

XI.

The allegations contained in Paragraph 11 of the Plaintiff's Original Complaint are denied.

XII.

The allegations contained in Paragraph 12 of the Plaintiff's Original Complaint are denied, except that it is admitted that the Defendant Cosco Bulk Carrier Co., Ltd. was the time charterer of the M/V YONG AN 2.

XIII.

The allegations contained in Paragraph 13 of the Plaintiff's Original Complaint are denied.

XIV.

The allegations contained in Paragraph 14 of the Plaintiff's Original Complaint are denied.

XV.

The allegations contained in Paragraph 15 of the Plaintiff's Original Complaint are denied.

XVI.

The allegations contained in Paragraph 16 of the Plaintiff's Original Complaint are denied.

XVII.

The allegations contained in Paragraph 17 of the Plaintiff's Original Complaint are denied.

XVIII.

The allegations contained in Paragraph 18 of the Plaintiff's Original Complaint are denied.

XIX.

The allegations contained in Paragraph 19 of the Plaintiff's Original Complaint are denied.

XX.

The allegations contained in Paragraph 20 of the Plaintiff's Original Complaint are denied.

XXI.

The allegations contained in Paragraph 21 of the Plaintiff's Original Complaint are denied.

THIRD DEFENSE

Defendants would further show that if the Plaintiff is presently impaired, such impairment is the result of pre-existing conditions, or the natural progression of those pre-existing conditions, but to no extent, is the Plaintiff's present impairment, if any, a result of the incident in question.

FOURTH DEFENSE

Defendants would further show that if the Plaintiff were injured as alleged, such injuries were the result of the Plaintiff's own negligence, or the negligence of other third parties for whom these Defendants are not responsible.

FIFTH DEFENSE

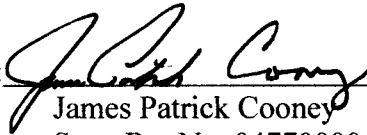
Defendant would further show that the Plaintiff has failed to mitigate his damages, if any.

SIXTH DEFENSE

Defendants would further show that the Plaintiff's claims are barred by the Exclusive Remedy Provision of the Longshore & Harbor Workers' Compensation Act.

WHEREFORE, PREMISES CONSIDERED, Defendants, China Ocean Shipping Company a/k/a Cosco, Cosco Bulk Carrier Co., Ltd., and Cosco Americas, Inc., pray that upon a final trial and hearing hereof, the Court enter its Judgment that Plaintiff take nothing, that these Defendants recover their costs, and have such other and further relief, general and special, legal and equitable, to which they may show themselves to be justly entitled.

Respectfully submitted,

By: 
James Patrick Cooney
State Bar No. 04770000
Federal ID 2826
Joseph Denney Terry
State Bar No. 24013618
Federal ID 24206
1001 McKinney Street, Suite 1100
Houston, Texas 77002
(713) 224-8380 - Telephone
(713) 225-9945 - Facsimile

ATTORNEYS FOR DEFENDANTS,
CHINA OCEAN SHIPPING COMPANY A/K/A
COSCO, COSCO BULK CARRIER CO., LTD.,
AND COSCO AMERICA, INC.

OF COUNSEL:

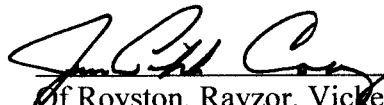
ROYSTON, RAYZOR, VICKERY & WILLIAMS, L.L.P.

CERTIFICATE OF SERVICE

I hereby certify that I have, on this the 18th day of October, 2005, deposited a true and correct copy of the foregoing by certified mail, return receipt requested and properly addressed to:

Kurt B. Arnold
Jason A. Itkin
Arnold & Itkin LLP
909 Fannin Street, Suite 3838
Houston, Texas 77010

Douglas Gilman
Mitchell Gilman L.L.P.
402 Main Street, Suite 6 South
Houston, Texas 77002

A handwritten signature in black ink, appearing to read "J. C. Williams", is written over a horizontal line.

of Royston, Rayzor, Vickery & Williams, L.L.P.